

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE FORMAL)	
COMPLAINT OF JAMES K. COOKE)	
AGAINST DELMARVA POWER & LIGHT)	PSC DOCKET NO. 19-0279
COMPANY REGARDING A DISPUTED)	
ACCOUNT)	
(FILED APRIL 22, 2019))	

Order No. 9530

This 8th day of January 2020, the Delaware Public Service Commission (“the Commission”) determines and orders the following:

WHEREAS, the Commission has received and considered the Findings and Recommendation of the Hearing Examiner issued in the above-captioned docket which is attached to this Order as Attachment “A”;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF
NOT FEWER THAN THREE COMMISSIONERS:

1. The Commission hereby adopts the “Findings and Recommendations of the Hearing Examiner” dated December 3, 2019 attached as Attachment “A” as the Commission’s own decision.
2. The Commission GRANTS Delmarva’s Motion to Dismiss the Complaint.

BY ORDER OF THE COMMISSION:

Chairman

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary

ATTACHMENT “A”

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

December 3, 2019

Glenn C. Kenton
Hearing Examiner

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I. APPEARANCES

On behalf of the Delaware Public Service Commission (“Staff”):
THOMAS WALSH, ESQ.
CONNIE MCDOWELL

On behalf of the Delaware Division of the Public Advocate (“DPA”):
REGINA IORII, ESQ.
ANDREW SLATER
ANDREA MAUCHER

On behalf of Delmarva Power & Light Company (“Delmarva”):
RENEE SUGLIA, ESQ.

On behalf of the Complainant, James K. Cooke (“Cooke”):
JAMES K. COOKE

II. BACKGROUND

1. On April 22, 2019, Mr. James K. Cooke (the “Complainant”) filed a complaint (“Complaint.”¹) with the Delaware Public Service Commission (“PSC” or the “Commission”) alleging, *inter alia* that Delmarva Power & Light Co. (“Delmarva”) opened an electric account (the “Account”) in his name and without his knowledge for a rental property (the “Rental Property”) he leased through Wilgus Associates (the “Rental Agent”) via a rental agreement (the “Rental Agreement”) at 431 Lekites Avenue, Bethany Beach, DE from November 30, 2017 through May 26, 2018. According to Complainant, the Rental Agent had told him the owner of the Property would be responsible for utilities.

2. Further, Complainant alleged that a \$ 915 home energy assistant grant that he had applied for at another property was mistakenly credited by Delmarva to the Rental Property account and not his home account.

3. According to Complainant, he received no electric bills from Delmarva for the Rental Property as he received no mail at this address. After the Delmarva bills for the Rental Property remained unpaid, Delmarva began collection efforts which, according to Complainant, negatively affect his credit.

4. The DPA filed a statutory notice of intervention on May 10, 2019.²

5. Delmarva Power filed an answer (“Delmarva’s Answer”) to the Complaint on May 20, 2019.³ According to Delmarva, in opening the Account, it was relying upon a copy of the Rental Agreement proffered by the Rental Agent, signed by the Complainant, pursuant to which the Rental Agent was permitted to open the Account in the name of the Complainant.

¹ *Exh. 1.* (Exhibits referred to herein are as listed in the Exhibit Log for this docket filed in Delafile.)

² *Exh. 2.*

³ *Exh. 3.*

6. On May 28, 2019, the Executive Director Rajnish Barua, Ph.D., of the Commission referred the Complaint to Hearing Examiner Glenn Kenton pursuant to Rule 2.5.2 of the Commission's Rules of Practice and Procedure (26 DE Admin. Code §1001-2.5.2.⁴)

7. On June 24, 2019, the Complainant filed a document styled an Amended Complaint which the Hearing Examiner ultimately determined should be treated as a response (the "Response") to Delmarva's Answer as permitted in the Procedural Schedule.⁵ According to the Complainant's Response, he had a "verbal agreement" with the Rental Agent that the owner of the Rental Property would be responsible for the payment of the electric utilities for the Property. He further provided evidence that he had never received a utility bill at the Rental Property via a letter for the local post office that they had delivered no mail to the Complainant at the Rental Property address.

8. Pursuant to a schedule agreed to by the parties, the parties exchanged two rounds of discovery and an evidentiary hearing was scheduled for August 29, 2019.⁶

9. Following the exchange of discovery, the Complainant at a pre-hearing conference call on August 26, 2019, requested a continuance of the August 29th hearing date so the parties could engage in settlement negotiations.⁷ The continuance was granted by the Hearing Examiner.

10. On October 3, 2019, not hearing from the parties as to the progress of settlement discussions, the Hearing Examiner inquired as to the status of the matter. Via email, Delmarva stated the following:

Delmarva has removed Mr. Cooke as a customer of record for the Lekites Avenue property and reversed all charges to him from that property, which eliminated his outstanding balance. Delmarva's credit department contacted the collections agency, National Recovery Agent, to cancel the collection of the outstanding balance of \$172.86

⁴ *Exh. 4.*

⁵ *Exh. 5.*

⁶ *Exh. 6.*

⁷ *Exh. 7.*

and to contact the Credit Bureau to adjust Mr. Cooke's credit score accordingly. Delmarva is also in the process of reworking its realtor application process so that the tenant will be required to sign an authorization form, similar to the landlord/property manager application process (which form was attached to Mr. Cooke's complaint). Accordingly, it is Delmarva's position that there are no outstanding issues left to litigate, and Delmarva respectfully requests this complaint be dismissed.

11. Accordingly, the Hearing Examiner agreed to accommodate Delmarva's request to file a Motion to Dismiss and issued a briefing schedule to govern such a motion.⁸

12. Delmarva filed a Motion to Dismiss on October 29, 2019⁹ in which Delmarva reiterated its position as described in the Hearing Examiner's inquiry¹⁰ that it had fully complied with all of Complainant's requests.

13. The deadline for Complainant's response to Delmarva's Motion to Dismiss was November 12, 2019 which passed without Complainant filing a response. Shortly thereafter, Staff contacted Complainant to learn of his position on Delmarva's Motion to Dismiss? Complainant advised Staff that he was going to consult counsel to determine his further participation.

14. As a result of Complainant not being represented by counsel, Hearing Examiner Kenton extended the date for Complainant's response to Delmarva's Motion to Dismiss until November 20, 2019.¹¹

15. Complainant did not file an Answer to Delmarva's Motion to Dismiss by the second deadline of November 20, 2019.

III. DISCUSSION

16. Complainant initially filed his Complaint on April 22, 2019. Delmarva promptly filed its Answer disputing Complainant's allegations.

⁸ *Exh. 8.*

⁹ *Exh. 9.*

¹⁰ Paragraph 10 herein.

¹¹ *Exh. 10.*

17. Following Complainant's Response to Delmarva's Answer, it became evident that the root of the problem in the Complaint seems to have originated with Delmarva opening the Account in Complainant's name as a result of language in his Rental Agreement that seems to permit this. Nevertheless, according to Complainant, it was his understanding with the Rental Agent that the landlord was supposed to pay for utility bills at the Rental Property. Complainant stated that he never received Delmarva's bills at the rental property and provided evidence that he received no mail at the address of the Rental Property.

18. In addition, according to Complainant, as a result of this "mix-up," a \$ 910 low income assistance credit ("LIHEAP") for which he had applied for at his previous address was misapplied to the (unbeknownst to him) Account at the Rental Property.

19. When Complainant's Account remained unpaid after repeated notifications by mail (which Complainant insists he never received), Delmarva began collection efforts as it is permitted to do pursuant to its tariff. Delmarva's collection efforts included assigning Complainant's unpaid balanced to a collection agency for collection. As a result, Complainant's credit file was negatively affected.

20. When Complainant realized that his deteriorated credit file was a result of (allegedly unbeknownst) unpaid bills to Delmarva and the misapplied LIHEAP credit, he initiated this Complaint.

21. Although DPA does not normally intervene in billing disputes between a utility and its customers, nevertheless it intervened in this docket principally as a result of what DPA believed was a non-consumer friendly policy of a utility opening a renter's utility account without a specific authorization of that renter based upon "buried" language in a rental agreement purportedly authorizing this process.

22. Following Mr. Cooke's complaint, Delmarva apparently entered into settlement discussions with him to resolve the matter. Following what appear to be on again-off again discussions, Delmarva on its own initiative stated it undertook the following resolution steps ("Resolution Steps") which form the basis of its Motion to Dismiss:

- a. Delmarva removed Mr. Cooke as a customer of record for the Lekites Avenue Property and reversed all charges to him from that property which eliminated his outstanding balance. Delmarva credited the \$ 915 LIHEAP credit to the Complainant's home address.
- b. Delmarva's credit department contacted the collections agency, National Recovery Agent, to cancel the collection of the outstanding balance of \$172.86 and contacted the Credit Bureau to adjust Mr. Cooke's credit score accordingly.
- c. Delmarva in the process of reworking its realtor application process so that the tenant will be required to sign an authorization form to permit Delmarva to open an account in his name at a rental property, similar to the landlord/property manager application process (which form was attached to Mr. Cooke's complaint).

23. Despite the Resolution Steps taken by Delmarva, nevertheless Complainant apparently was not satisfied. As a result, Delmarva filed its Motion to Dismiss.

24. Following Delmarva's Motion to Dismiss, I attempted to set a schedule to consider the motion. After several unsuccessful attempts to contact the Complainant to gain his acquiescence to my proposed schedule, he finally responded via email that my draft schedule was agreeable to him. Pursuant to this schedule, Complainant's Answer to Delmarva's Motion to Dismiss was due on November 12, 2019. Despite Complainant's agreement to the schedule, the deadline passed without the Complainant filing his Answer.

25. Following the passed deadline for Complainant's Answer, Staff again contacted Complainant to ascertain his position. The Complainant replied that he was still not satisfied with Delmarva's actions. At that point, recognizing that Complainant was not represented by counsel, I revised the schedule for him to file an Answer. The revised Answer date deadline was November 20, 2019. I advised all parties by email, including the Complainant, that if Complainant did not file his Answer by this date, I would move promptly to consider and decide Delmarva's Motion to Dismiss.

26. The November 20, 2019 second deadline for Complainant's Answer to Delmarva's Motion to Dismiss passed and, once again, Complainant failed to file his Answer.

27. At that point, I contacted DPA to see if it intended any further filings in this docket. DPA advised me that it would not file anything further as its main concern, Delmarva's policy of permitting a rental agent to apply to open a utility account in a renter's name without specific authorization by the renter, was in the process of being revised by Delmarva.

IV. FINDINGS AND RECOMMENDATIONS

28. This is a somewhat troubling matter, as the Complainant, unrepresented by counsel, has repeatedly failed to participate in the proceedings. As a result, I have repeatedly extended deadlines and prompted Staff to reach out to him to encourage his participation. Complainant has been given every opportunity to state his case and to participate. Nevertheless, especially since Delmarva has on its own initiative implemented the Resolution Steps he has requested, Complainant has failed to respond to Delmarva's Motion to Dismiss.

29. Complainant bears the Burden of Proof for his allegations in his Complaint.¹²

¹² See 29 *Del. C.* §10125(c) and 26 *Del. Admin. C.* §1001-2.12.3.

30. In Delmarva's Motion to Dismiss, it has stated that it has implemented each of the actions the Complainant has requested either in his original Complaint or in his Response. These include the Resolution Steps as follows:

- a. Delmarva removed Mr. Cooke as a customer of record for the Lekites Avenue Property and reversed all charges to him from that property which eliminated his outstanding balance. Delmarva credited the \$ 915 LIHEAP grant to the Complainant's home address.
- b. Delmarva's credit department contacted the collections agency, National Recovery Agent, to cancel the collection of the outstanding balance of \$172.86 and contacted the Credit Bureau to adjust Mr. Cooke's credit score accordingly.
- c. Delmarva in the process of reworking its realtor application process so that the tenant will be required to sign an authorization form, similar to the landlord/property manager application process (which form was attached to Mr. Cooke's complaint).

31. Having no response from the Complainant as to what remaining issues (if any) he has with Delmarva's Resolution Steps and its Motion to Dismiss, I conclude he has not met his burden of proof as required by Delaware law.

32. From my perspective, Delmarva has implemented each and every request (as I understand them to be) made by Complainant. If he still has remaining issues, I do not know what they might be?

33. Accordingly, I grant Delmarva's Motion to Dismiss in this matter and recommend the Commission concur.

Respectfully submitted,

/s/ Glenn C. Kenton

Glenn C. Kenton
Hearing Examiner

